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COMMUNICATION FROM THE PRESIDENT TO THE COMMISSION

**FRAMEWORK FOR COMMISSION EXPERT GROUPS:
HORIZONTAL RULES AND PUBLIC REGISTER**

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I. INTRODUCTION

In July 2005 the Commission defined a new institutional framework for expert groups replacing the annual authorisation system introduced in the 1980s¹. This framework provided for horizontal rules governing the creation and operation of expert groups and the setting up of an on-line public Register of these groups. It supplemented the initiatives already undertaken by the Commission on the basis of the White Paper on European Governance², notably its Communications on principles and guidelines on the collection and use of expertise by the Commission³ and on general principles and minimum standards for consultation of interested parties⁴.

In October 2005 the Commission launched an on-line Register of expert groups⁵, providing access to valuable information on key elements of individual expert groups, including their mission, tasks and policy areas concerned. Over the years, the Commission has been focusing on improving the quality and reliability of data included in the Register, notably through regular updates. The Commission has also enhanced transparency by gradually publishing the names of members of expert groups in the Register; this exercise was completed in January 2009.

In April 2009 the SG, in collaboration with services, issued an evaluation report on the implementation of the horizontal rules within the framework for Commission expert groups⁶. In light of the information provided by DGs concerned and of the overall experience gained since the setting up of the framework for experts groups in 2005, this report proposed to revise the horizontal rules and the existing Register of expert groups and, to that effect, it put forward a number of suggestions and options.

Building on the above-mentioned evaluation report, the present Communication establishes a new framework for Commission expert groups (also referred to in this Communication as "expert groups"), which includes a revised set of horizontal rules (annex). The new framework takes into consideration the 2010 Framework Agreement between the European Parliament and the Commission, in relation to information to be transmitted to Parliament, as well as invitation of EP experts to expert groups' meetings.

¹ C(2005) 2817 of 27.7.2005.

² COM(2001) 428 final of 25.7.2001.

³ COM(2002) 713 final of 11.12.2002.

⁴ COM(2002) 704 final of 11.12.2002.

⁵ The internal application of the Register can be accessed by Commission services only; it is used to encode, modify and validate relevant data on expert groups. Once this process is completed the group is transferred to the public site.

⁶ SEC(2009) 486 of 2.4.2009.

In addition, the main features of the new version of the Register, together with standard templates for use by the services when establishing and running expert groups, are part of the Commission staff working document which is attached to this Communication.

II. NEW FRAMEWORK FOR COMMISSION EXPERT GROUPS

1. Key principles

Commission expert groups are consultative entities set up by the Commission or its services, comprising at least six public and/or private-sector members, which are foreseen to meet more than once⁷. The role of expert groups⁸ is to provide advice and expertise to the Commission and its services in relation to:

- (1) the preparation of legislative proposals and policy initiatives (Commission's right of initiative);
- (2) the preparation of delegated acts, as referred in the Communication on the implementation of article 290 of the Treaty on the Functioning of the European Union⁹;
- (3) the implementation of existing EU legislation, programmes and policies, as well as the coordination and cooperation with Member States in that regard.

The creation and functioning of expert groups are governed by the horizontal rules attached to this Communication (annex). These rules are designed to operate within the diversity of circumstances faced by expert groups, by providing Commission departments with a sound and flexible set of guidelines, and ensuring a coherent approach in the area of expert groups.

Expert groups do not take binding decisions, although they may formulate opinions and recommendations or submit reports. They are first and foremost *fora* for discussion and brainstorming, the primary function of which is to provide the Commission with high-level expertise. In addition, gathering expertise from various sources is also a way of gathering the views from different stakeholders. For this purpose, services are bound to apply the general principles and minimum standards for consultation of interested parties¹⁰.

The Commission and its departments remain fully independent regarding the way they take into account the expertise and views gathered and, when proposing a new policy or measure, they always aim at finding the best solution in the general interest of the European Union and its Member States.

When defining the composition of expert groups, the Commission and its departments shall aim at ensuring a balanced representation of relevant areas of expertise and areas of interest,

⁷ See Rule 2 of the horizontal rules (Annex).

⁸ See Rule 3 of the horizontal rules (Annex).

⁹ COM(2009) 673 final, point 4.2.

¹⁰ COM(2002) 704 final of 11.12.2002.

as well as a balanced representation of gender and geographical origin, while taking into account the specific tasks of every particular expert group and the type of expertise required¹¹.

In order to ensure that the Commission obtains the full range of views and expertise on a given matter, it may also count on other instruments and processes, which supplement the work of expert groups, such as studies, European agencies, Green papers and hearings¹². Therefore, the degree of overall participation and representation of stakeholders should be assessed in light of all initiatives taken by the Commission.

2. Main improvements brought in by the new framework

The new framework aims at simplifying and clarifying provisions introduced by the previous framework on expert groups in 2005, increasing transparency, enhancing coordination, while reducing the administrative workload for services.

The main improvements introduced compared to the previous framework are the following:

- **Simplifying and clarifying rules.** Unlike the previous framework, which foresaw a number of minimum horizontal rules for all expert groups and additional rules for formal groups¹³ - i.e. those created by a Commission Decision - under the new framework, the horizontal rules apply to all groups, whether they are formally or informally established. This contributes to a more coherent set of provisions covering all aspects of expert groups' activities. In addition, the horizontal rules have been redrafted and streamlined, also taking into account the experience gained since 2005; in particular, key concepts, such as the definition, role and membership¹⁴ of expert groups have been made clearer.
- **Increasing transparency.** The new framework enhances transparency in different ways. First of all, it codifies rules on the publication of names of members of expert groups which have been developed since June 2007¹⁵. It also foresees that services must provide information in the Register on activities carried out by expert groups and on the selection processes used. Furthermore, the new version of the Register will clearly distinguish between, on the one hand, Commission expert groups as defined by the horizontal rules and, on the other hand, other similar entities which are currently also listed in the Register, by creating a separate category for the latter. This will provide a clearer picture of the content of the Register.
- **Enhancing coordination.** Today the majority of groups listed in the Register are managed by one DG and are not linked or associated with other services. According to the new framework, a service wishing to set up an expert group is required to informally consult other relevant services, *inter alia* in order to ensure coordination and avoid duplication. In addition, services are to endeavour to merge different

¹¹ However, it is to be noted that when Member States' authorities or organisations are members of expert groups, it is normally up to them to identify their representatives, particularly where the composition of the group is likely to vary according to the agenda.

¹² See also COM(2002) 713 final of 11.12.2002, p. 6.

¹³ Additional rules concerned the appointment and selection of experts, publication of their names and rules of procedure.

¹⁴ The new text clearly distinguishes between certain actual members of expert groups (Member States' authorities, organisations) and individuals simply representing them in meetings.

¹⁵ SEC(2007) 639 of 25.6.2007.

groups having a limited scope that fall within the same policy area into one single group with a wider scope. This is particularly relevant when a group is exclusively composed of Member States' authorities, where representatives may vary according to the agenda.

- **Reducing the administrative workload for services.** In general terms, by simplifying and clarifying rules the new framework is expected to ease the implementation of the relevant provisions by services. In addition, some specific changes introduced will reduce the administrative workload. In fact, contrary to the previous framework, the horizontal rules no longer foresee any circumstances under which it is mandatory to formally create an expert group by a Commission Decision. However, it will always be possible to do so, should it be considered appropriate. Furthermore, in light of the type of work carried out by expert groups - which do not take binding decisions, and the primary function of which is to provide high-level expertise - the establishment of rules of procedures, which at present is mandatory for formal groups, becomes optional for any group. Finally, the new version of the Register will simplify encoding requirements for services.

3. Scope of the new horizontal rules

The horizontal rules apply to Commission expert groups as defined in rule 2 of those rules¹⁶.

The following are not Commission expert groups and are therefore excluded from the scope of the horizontal rules:

- expert groups set up by formal instruments of other EU institutions;
- groups whose role is different from the one indicated in rule 3 of the horizontal rules¹⁷;
- ad hoc events, such as one-off meetings, conferences etc.;
- "comitology" committees¹⁸;

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See annex.

The new framework will not therefore apply to the Board of Governors of the Joint Research Centre (JRC), which is an organ of the JRC and whose role and terms of reference are set by Commission Decision 96/282/Euratom of 10.4.1996. The role of the Board of Governors is different from that of a group of experts, since the Board of Governors assists the Director General with strategic, managerial and organisational issues of the JRC.

¹⁸

Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission 1999/468/EC (OJ L 184, 17.7.1999, p. 23) as amended by Council Decision 2006/512/EC of 17.7.2006.

- independent experts charged with assisting the Commission in evaluating proposals and monitoring projects in the implementation of activities in the area of research and technological development by virtue of the provisions on Research and Technological Development and Space of the Treaty on the Functioning of the European Union (art. 179-190). The activities of these experts are governed by rules adopted by the legislator¹⁹;
- sector and cross-industry social dialogue committees. Their work is particularly aimed at the conclusion of agreements implemented by the Council or autonomous agreements implemented by the social partners themselves and at adopting frameworks for action. The Commission has adopted specific rules to govern the activities of committees dealing with the social dialogue²⁰;
- joint entities arising from international agreements. These entities differ from expert groups in terms of their creation and competence, as they are created in accordance with methods laid down in international agreements to supervise their implementation.

Nevertheless, the provisions on transparency set out in Chapter IV will apply to other similar entities as defined in Rule 2²¹.

III. OPERATIVE PART

In conclusion, the Commission is called upon to:

- approve this Communication establishing a new framework for Commission expert groups, which replaces the framework introduced by the communication C(2005) 2817;
- approve the new horizontal rules concerning the creation and operation of expert groups (Annex);
- take note of the Commission Staff Working Document attached to this Communication;
- task the SG with promoting the implementation of the horizontal rules relating to the creation and operation of expert groups;

¹⁹ Article 160(3) of Council Regulation (EC, Euratom) No 1605/2002 of 25.6.2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p. 1). This provision refers to the framework research programmes for the recruitment procedures of the experts and the related rules for participation.

²⁰ Commission Decision of 20.5.1998 on the establishment of Sectoral Dialogue Committees promoting the Dialogue between the social partners at European level (OJ L 225, 12.8.1998, p. 27), and the Communication from the Commission - Partnership for change in an enlarged Europe - Enhancing the contribution of European social dialogue, COM(2004) 557 final, annexes 1 and 4.

²¹ See Rules 1, 2 and 17-20 of the horizontal rules (Annex).

- task the SG, in collaboration with the DGs, with preparing a new version of the public Register of expert groups, which will be named "Register of Commission expert groups and other similar entities", in accordance with the key features set out in Annex I of the staff working document attached to this Communication.

ANNEX

HORIZONTAL RULES FOR COMMISSION EXPERT GROUPS

Chapter I

General provisions

Rule 1

Scope of the horizontal rules

- (1) These horizontal rules apply to Commission expert groups as defined in Rule 2.
- (2) In addition, the provisions on transparency set out in Chapter IV shall apply to other similar entities as defined in Rule 2(4) and listed in the Register of Commission expert groups and other similar entities (hereinafter referred to as "the Register"). The Register replaces the Register of expert groups set up in 2005.

Rule 2

Definitions

- (1) 'Commission expert group' (hereinafter referred to as "expert group") means a consultative entity set up by the Commission or its services for the purpose of providing them with advice and expertise as set out in Rule 3, which comprises at least six members and is foreseen to meet more than once.
- (2) 'Formal expert group' means an expert group set up by a Commission Decision.
- (3) 'Informal expert group' means an expert group set up by a Commission service with the agreement of the Secretariat General.
- (4) 'Other similar entity' means a consultative entity which was not set up by the Commission or its services, the role of which is the same as, or similar to, that set out in Rule 3 and for which the Commission services ensure administrative and financial management.

Rule 3

Role of expert groups

The role of expert groups shall be to provide advice and expertise to the Commission and its services in relation to:

- (1) the preparation of legislative proposals and policy initiatives in the framework of the Commission's right of initiative;
- (2) the preparation of delegated acts;

- (3) the implementation of existing Union legislation, programmes and policies as well as coordination and cooperation with Member States and stakeholders in that regard.

Chapter II

Provisions on the setting up of expert groups

Rule 4

Creation

- (1) A Commission service wishing to set up an expert group shall informally consult other relevant Commission services, amongst other things in order to ensure coordination and avoid duplication.
- (2) In order to decide whether a formal or an informal expert group is to be created, Commission services shall take into consideration the anticipated political impact of the work of the group.
- (3) A Commission service wishing to set up a formal expert group shall make use of the standard template for a Commission Decision setting up an expert group established for that purpose by the Secretariat General. Services may depart from the standard template or supplement it where this is justified by specific requirements. The Decision establishing the expert group shall clearly indicate who shall appoint the members of the group, in particular if they are to be appointed by the College, the Director General concerned or by other relevant bodies.
- (4) A Commission service wishing to set up an informal expert group shall submit a request to the Secretariat General via the Register. If all relevant information is provided, the Secretariat General shall give formal authorisation for setting up the expert group. Some of the provisions set out in the standard template for a Commission Decision referred to in paragraph 3 may provide guidance for the setting up of informal expert groups.
- (5) When setting up an expert group the types of members of which it is to be composed, as provided for in Rule 8, shall be specified.
- (6) Expert groups may be established for a fixed or unlimited duration.

Rule 5

Scope of expert groups

Expert groups may have a specific or a wide scope. Commission services shall endeavour to merge different groups having a limited scope that fall within the same policy area into one single group with a wider scope, in particular for groups composed exclusively of Member States' authorities, whose representatives may vary according to the agenda.

Rule 6

Title

Without prejudice to existing expert groups, the name of each expert group shall, as far as possible, include the term “*Commission expert group*”.

Rule 7

Tasks

The tasks of expert groups shall be specified as clearly as possible. They shall be in line with the role of expert groups, as defined in Rule 3.

Rule 8

Composition

Expert groups may be composed of the following types of members:

- (1) individuals appointed in their personal capacity;
- (2) individuals appointed to represent a common interest shared by stakeholders in a particular policy area; they shall not represent an individual stakeholder;
- (3) organisations, in the broad sense of the word including companies, associations, Non-Governmental-Organisations, trade unions, universities, research institutes, Union agencies, Union bodies and international organisations;
- (4) Member States' authorities, at national, regional or local level.

Rule 9

Selection process and appointment of members

When expert group's members are appointed by the Commission or its services, the following provisions shall apply:

- (1) Where individual experts are appointed in their personal capacity, they shall be chosen according to a selection process that guarantees a high level of expertise and, as far as possible, geographical and gender balance, taking into account the specific tasks of the expert group and the type of expertise required. In addition, the selection of experts shall be carried out in such a way as to avoid any conflict of interests.

Without prejudice to specific selection procedures provided for by Commission decisions establishing expert groups, public calls for applications shall be used as far as reasonably practicable. For that purpose, Commission services shall make use of the standard template for a call for applications for the selection of experts appointed in a personal capacity established by the Secretariat General. Services may depart from the template or supplement it, where this is justified by specific requirements.

Where a call for applications is not reasonably practicable (for example where very specific expertise is required), the choice of experts shall be made on the basis of objectively verifiable criteria.

The Commission services concerned shall inform experts who are appointed in their personal capacity that, by accepting to be members of the group, they commit themselves to act independently and in the public interest. Commission services shall also inform those experts that they may be excluded from the group or a specific meeting thereof, should a conflict of interest arise.

- (2) Where individual experts are appointed to represent an interest or where organisations are appointed as members of expert groups, Commission services shall, as far as possible, ensure a balanced representation of relevant stakeholders, taking into account the specific tasks of the expert group and the type of expertise required. Where appropriate, individuals representing an interest may be appointed on the basis of proposals put forward by the stakeholders concerned.
- (3) Where individual experts are appointed, either in their personal capacity or to represent an interest, a balance between men and women shall be sought. The medium-term aim shall be to have at least 40% of representatives of each gender in each expert group.
- (4) Members shall be appointed for a fixed or an unlimited period. They shall remain in office until replaced, or until the end of their term of office, where applicable. Their term of office may be renewed.
- (5) Provision may be made for the same number of alternates as members to be appointed. Alternates shall be appointed in accordance with the same conditions as the latter. Alternates shall automatically replace any members who are absent or indisposed. Where the selection of individual experts is made through a call for applications, the Commission or its services may establish a reserve list of suitable candidates that may be used to appoint suitable replacements. The Commission or its services shall ask applicants for their consent before including their names on the list.

Rule 10

Nomination of representatives of organisations and Member States' authorities

- (1) Where an organisation or an authority of a Member State is a member of an expert group, it may nominate individuals as permanent representatives or appoint appropriate representatives on an ad hoc basis depending on the meeting agenda. Organisations and Member States' authorities shall be responsible for ensuring that their representatives provide a high level of expertise.
- (2) The Commission or its services may refuse a representative nominated by an organisation if they consider that the nomination is not appropriate on the basis of justified grounds specified when the group is set up or in the rules of procedures of the group. In such cases, the organisation concerned shall be asked to appoint another representative.

Chapter III

Provisions on the functioning of expert groups

Rule 11

Operation

- (1) Expert groups shall be chaired by a representative of the Commission or by a person appointed by the Commission services. Alternatively, the Commission or its services may decide that the group shall elect its chairperson by a simple or qualified majority of its members.
- (2) An expert group shall act at the request of the Commission services or at the request of its chairman with the agreement of the Commission services.
- (3) In agreement with the Commission services, expert groups may establish sub-groups for the purpose of examining specific questions on the basis of a clearly defined mandate. They shall be dissolved as soon as the mandate is fulfilled. Sub-groups shall operate in accordance with the rules laid down by the expert group which creates them and with these horizontal rules.
- (4) The Commission's representative may invite experts with specific competence in a subject on the agenda to take part in the work of the group or sub-group on an ad hoc basis. In addition, the Commission's representative may grant observer status to individuals, organisations as referred to in Rule 8(3) and candidate countries.
- (5) The obligation of professional secrecy which, by virtue of the Treaties and the rules implementing them, applies to all members of the institutions and their staff, is also relevant for expert groups advising the Commission. In the same manner, the provisions of the Commission's rules on security regarding the protection of EU classified information, laid down in the Annex to Commission Decision 2001/844/EC, ECSC, Euratom²², shall be applicable to expert groups. Members of expert groups and their representatives, as well as invited experts and observers, are bound by those obligations. Should they fail to comply with those obligations, the Commission may take all appropriate measures.
- (6) If not otherwise provided for, the Commission services shall provide secretarial services for expert groups and sub-groups.

Rule 12

Information to be transmitted to the European Parliament

Where expert groups comprise the national authorities of all Member States, the Commission services shall send the European Parliament the same documentation that they send to national authorities in relation to the meetings of those expert groups, where such meetings

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OJ 317, 3.12.2001, p. 1.

concern the preparation and implementation of Union legislation, including delegated acts and soft law. The Commission services shall transmit those documents, including agendas, to a functional mailbox of the European Parliament at the same time as they are sent to the national authorities. This is without prejudice to the provisions regarding the forwarding of confidential information to the European Parliament, as annexed to the revised Framework Agreement on relations between the European Parliament and the Commission.

Rule 13

Invitation of European Parliament experts

Upon request of the European Parliament, the Commission services may invite the European Parliament to send experts to attend meetings of expert groups referred to in Rule 12.

Rule 14

Location of meetings

The meetings of expert groups and sub-groups shall, in principle, be held on Commission premises.

Rule 15

Rules of procedures

Expert groups may adopt rules of procedures. For this purpose, Commission services shall make use of the standard rules of procedure of expert groups established by the Secretariat General. Services may depart from the standard rules of procedure or supplement them, where this is justified by specific requirements.

Rule 16

Meeting expenses

- (1) Participants in the activities of an expert group shall, in principle, not be remunerated for the services they render. Payment of a special allowance to members, invited experts and observers shall only be possible in duly justified cases.
- (2) Travel and subsistence expenses incurred by participants in the activities of expert groups shall be reimbursed by the Commission. Reimbursement shall be made in accordance with the provisions in force within the Commission and within the limits of the available appropriations allocated to the Commission services under the annual procedure for the allocation of resources.

Chapter IV

Provisions on transparency

Rule 17

Publication of expert groups and other similar entities in the Register

- (1) All Commission expert groups and other similar entities as defined in Rule 2 shall be published in the Register.
- (2) For each expert group and similar entity, Commission services shall provide information required in the Register. Personal data shall be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data²³.

Rule 18

Publication of names

The names of members and, where existing, alternate members and observers of expert groups and other similar entities as defined in Rule 2 shall be published in the Register as follows:

- (1) where individual experts are appointed in their personal capacity or to represent an interest, their names shall be published in the Register;
- (2) where organisations are appointed, the name of the organisations shall be published in the Register;
- (3) where the members of expert groups are Member States' authorities, the specific administrations to which experts usually participating in the meetings belong may be published;
- (4) Where Member States' authorities or organisations nominate individuals as permanent representatives as provided for in Rule 10, their names may be published in the Register.

Individuals who do not wish to have their names disclosed may submit a request to the Commission for a derogation from the rules on publication. A derogation shall only be granted if disclosure of the expert's name could endanger their security or integrity or unduly prejudice their privacy.

²³

OJ L 8, 12.1.2001, p. 1.

Rule 19

Activities carried out

Commission services shall ensure that information concerning the activities carried out by expert groups and other similar entities as defined in Rule 2 is made public directly in the Register or via a link from the Register to a dedicated website.

Rule 20

Selection of members

The Register shall include information on the process used for the selection of the members of expert groups and other similar entities as defined in Rule 2.

Chapter V
Transitional measures

Rule 21

Migration towards the new Register

Migration tools ensuring automatic transfer of existing data from the Register of expert groups set up in 2005 to the Register referred to in Rule 1, when technically possible, shall be put in place. Commission services shall encode data which cannot be migrated as well as additional data required by the Register, within six months from the time when the relevant features of the Register are available.